

Rindinger
143913



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Andrew Fischer - Relocation Expenses -
Miscellaneous Expense Allowance Items

File: B-241710

Date: May 13, 1991

DIGESTS

1. A transferred employee attempted to cancel a residence purchase contract entered into prior to notice of transfer and retrieve his earnest money deposit. As a result of court action initiated by the seller, the court concluded that the earnest money deposit had been forfeited to the seller for breach of contract, and awarded the seller judgment for an additional amount as liquidated damages to cover expenses and lost rental income. The forfeited deposit as well as the liquidated damages and court costs may be included as miscellaneous expenses under section 302-3.1(c) of the Federal Travel Regulation, because the transfer to the new duty station was the proximate cause of those expenses. Cf. Steven W. Hoffman, B-184280, May 8, 1979.

2. A transferred employee claimed the cost of new driver's licenses for himself and his wife as a miscellaneous expense under section 302-3.1(b) of the Federal Travel Regulation. The agency permitted the inclusion of only one license. The cost of both are to be included as allowable expenses. George M. Lightner, B-184908, May 26, 1976.

3. A transferred employee rented a post office box at his new duty station for a short period until he established a residence at that location and claimed the cost as a miscellaneous expense under section 302-3.1(b) of the Federal Travel Regulation. Since the purpose for the allowance is to help defray the extra expenses incurred during the transitional period when a residence is discontinued at the old station and a residence is established at the new station, the short-term post office box rental qualifies as an allowable miscellaneous expense. B-163107, May 18, 1973, and George M. Lightner, B-184908, May 26, 1976, are overruled in part.

4. A transferred employee's claim for telephone calls as allowable miscellaneous expenses under section 302-3.1(b) of the Federal Travel Regulation (FTR) was disallowed by the agency in its entirety. Such expenses may be allowed or disallowed depending on the purpose for the calls. Where

telephone calls concern a matter which would itself be allowable elsewhere in the FTR, e.g., real estate transactions, telephone calls regarding it are includable as a miscellaneous expense. Timothy R. Glass, 67 Comp. Gen. 174, 177 (1988).

DECISION

This decision is in response to a request from Mr. Gary R. Heitmann, Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs (BIA), U.S. Department of the Interior.^{1/} The question is whether an employee's miscellaneous expense allowance for a permanent change of station in September-October 1989 was correctly calculated. We conclude that several adjustments are required to be made regarding the expense items to be included and such adjustments may result in an increased allowance.

BACKGROUND

Mr. Andrew Fischer, an employee of the BIA, was transferred from Demidji, Minnesota, to Aberdeen, South Dakota. Prior to notice of that transfer, Mr. Fischer executed a contract to purchase a residence at his old station and paid \$500 to the realtor as an earnest money deposit. Following notice of transfer, he attempted to cancel the contract and retrieve his deposit. The seller refused to permit it to be returned. Further, since the seller had already incurred expenses to prepare the residence for sale to Mr. Fischer and suffered a loss of rental income from part of the property pending sale, the seller sued Mr. Fischer for damages in Small Claims Court. By court order dated December 27, 1989, the court concluded that the earnest money deposit had been forfeited by the breach of contract and also awarded the seller judgment for an additional \$241.73 to cover reasonable expenses and lost rental income. This included \$21 as a court filing fee.

Mr. Fischer filed a travel voucher claiming \$1,224.64 as miscellaneous expenses. On audit, the agency disallowed \$581.34 of the claimed expenses, including the \$241.73 damages award. Since the remaining allowable amount (\$643.30) was below the minimum amount payable to him as a miscellaneous expense allowance (\$700), he was reimbursed \$700.

On reclaim, Mr. Fischer contends that the \$241.73 paid under the court order should be included in his entitlement, citing to our decision Steven W. Hoffman, B-193280, May 8, 1979, as controlling. The BIA requests our review of the disallowed amounts.

^{1/} Reference: Aberdeen Area Branch of Finance, MC: 203.

OPINION

An employee, who is transferred in the interest of the government and who has discontinued and reestablished a residence in connection with that transfer, is entitled to a miscellaneous expense allowance under the provisions of 5 U.S.C. § 5724a(b), as implemented by part 302-3 of the Federal Travel Regulation (FTR).^{2/} Section 302-3.3(a)(2) of the FTR provides that an employee with an immediate family is entitled to receive as a miscellaneous expense allowance the lesser of \$700, or the equivalent of 2 weeks' basic pay, without requiring documentation of expenses. Where documentation of expenses is supplied, section 302-3.3(b) provides, that, if the allowable miscellaneous expenses of an employee with immediate family exceed \$700, those additional expenses may be paid, but the higher payment may not exceed the lesser of the employee's basic pay for 2 weeks or the maximum basic pay rate of grade GS-13 for that period.

We agree that the following expenses allowed by the agency are properly included for miscellaneous expense allowance purposes:

Earnest money deposit forfeited	\$500.00
Telephone installation	37.80
Cable TV installation	36.75
Piano tuning - new duty station	40.00
Vehicle registration	22.75

Other expenses incurred are subject to the following analysis.

Breach of Contract Judgment

In decision Steve W. Hoffman, B-193280, supra, citing to several earlier decisions of this Office, we ruled that where a transferred employee forfeited a loan commitment fee and incurred the expenses of hiring an attorney to negotiate a release from a residence construction contract, those expenses are properly included as miscellaneous expenses. However, Hoffman did not involve the court-awarded damages in question here.

Section 302-3.1(c) of the FTR states, in part:

"(c) Types of costs not covered. This allowance shall not be used to reimburse the employee for

^{2/} 41 C.F.R. part 302-3 (1990).

. . . judgments, court costs, and similar expenses growing out of civil actions; or any other expenses brought about by circumstances, factors, or actions in which the move to the new duty station was not the proximate cause. . . ."

Ordinarily the fact that an employee has been transferred is not the proximate cause of a dispute that arises in the course of moving and requires legal action for its resolution. Therefore, costs arising out of that legal action are not covered by the miscellaneous expenses allowance. For example, the allowance does not cover liability imposed by a court as a result of an automobile accident that occurs while traveling to a new duty station.

On the other hand, occasionally there are circumstances like those involved here in which the transfer is the proximate cause of the legal action and the resulting liability. Had Mr. Fischer not been transferred, we presume that he would have fulfilled his contract obligation to purchase the residence at his old duty station, gone to settlement and moved in. However, because of his transfer, not only was he no longer able to fulfill his agreement to purchase, but a dispute arose between him and the seller regarding disposition of his earnest money deposit and responsibility for various costs incurred by the seller pursuant to the purchase contract. The matter was resolved by the court by rendering judgment in favor of the seller. In our view § 302-3.1(c) does not exclude the costs associated with that judgment from those allowable as miscellaneous expenses.

Driver's Licenses

Mr. Fischer claimed \$12 for driver's licenses for himself and his wife. The agency permitted inclusion of only the employee's license as a miscellaneous expense item. The \$12 cost for both driver's licenses are to be included. George M. Lightner, B-184908, May 26, 1976.

Post Office Box Rental

The agency excluded the \$14 cost incurred by Mr. Fischer for a short-term rental of a post office box in the vicinity of his new duty station in Aberdeen South Dakota. In decision George M. Lightner, B-184908, Idra, citing to decision B-163107, May 18, 1973, we ruled that such a rental charge was not reimbursable. Although the basis for that disallowance was doubt that such expense was one of the types of expenses covered by the regulations, on further consideration we believe that conclusion was unduly restrictive.

The rental of a post office box is not an expense item specifically excluded under 41 C.F.R. § 302-3.1(c). Since the purpose for the miscellaneous expense allowance is to help defray the extra expense incurred during the transitional period associated with discontinuing a residence at the old station and establishing a residence at the new station, we see no reason not to permit the short-term rental of a post office box during that transition period to be included as an allowable item under section 302-3.1(b) of the FTR. Therefore, Mr. Fischer's cost for that rental is to be included as a miscellaneous expense. To the extent that our decisions in B-163107, supra, and George M. Lightner, B-184908, supra, disallowed short-term post office box rentals as miscellaneous expenses, they are overruled.

Telephone Calls

Mr. Fischer's claim for telephone calls (\$91.46) during the period prior to moving into permanent quarters at his new duty station was disallowed in its entirety. In Timothy R. Glass, 67 Comp. Gen. 174 (1988), citing to Richard B. Dawson, B-189140, Nov. 23, 1977, and Walter Alt, B-185160, Jan. 2, 1976, we ruled that where a telephone call concerned a matter which would itself be allowable under other parts of the FTR, e.g. real estate transactions, the expense of the call is allowable as a miscellaneous expense. Therefore, if Mr. Fischer can demonstrate that certain telephone call costs related specifically to allowable expenses elsewhere in the FTR, those costs may be included as a miscellaneous expense.

To the extent that the additional expenses allowed by the decision increase Mr. Fischer's total allowable expenses over \$700, he may be reimbursed the additional amount.

Milton J. Arolov

Acting Comptroller General
of the United States